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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

07-CR-535-BR

Plaintiff,

ORDER

v.

JOSEPH OQUENDO SALADINO,
RICHARD ALLEN FUSELIER,
MARCEL ROY BENDSHADLER,
MICHAEL SEAN MUNGOVAN, and
RICHARD J. ORTT

Defendants.

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BROWN, Judge.

This matter comes before the Court on the government's Notice (#122) of Legal Analysis to Establish the Internal Revenue Service is an Agency of the United States Government. For the reasons that follow, the Court **GRANTS** the government's request that the Court take judicial notice that the Internal Revenue Service (IRS) is an agency of the United States government as set out in this Order.

BACKGROUND

On December 20, 2007, a grand jury indicted Defendants Joseph Oquendo Saladino, Richard Allen Fuselier, Marcel Roy Bendshadler, Michael Sean Mungovan, and Richard J. Ortt on one count of Conspiracy to Defraud in violation of 18 U.S.C. § 371.

On December 19, 2008, the government filed a Notice to Establish the [IRS] is an Agency of the United States Government in which it requests the Court to take judicial notice of the fact that the IRS is an agency of the United States government.

STANDARDS

Federal Rule of Evidence 201(b) provides authority for the Court to take judicial notice of a fact that is "not subject to reasonable dispute in that it is either (1) generally known

within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Federal Rule of Evidence 201 also provides: "A court may take judicial notice, whether requested or not[, and] . . . [a] court shall take judicial notice if requested by a party and supplied with the necessary information." Fed. R. Evid. 201(c) and (d).

DISCUSSION

Internal Revenue Code (IRC) 26 U.S.C. § 7801(a) provides the administration and enforcement of the IRC "shall be performed by or under the supervision of the Secretary of the Treasury." In addition, 26 U.S.C. § 7803(a) provides for the appointment of a Commissioner of Internal Revenue in the Department of the Treasury who "shall have such duties and powers as may be prescribed by the Secretary of the Treasury," including the power to "administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws." Finally, Department of the Treasury Regulation 26 C.F.R. § 601.101(a) provides in pertinent part:

The Internal Revenue Service is a bureau of the Department of the Treasury under the immediate direction of the Commissioner of Internal Revenue. The Commissioner has general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue. The Internal Revenue Service is the agency by which these functions are performed.

The Supreme Court has noted "the Internal Revenue Service is organized to carry out the broad responsibilities of the Secretary of the Treasury under section 7801(a) of the [Internal Revenue] Code for the administrative and enforcement of the internal revenue laws." *Donaldson v. United States*, 400 U.S. 517, 534 (1971). In addition, several courts have concluded the IRS is an agency of the United States. For example, in *Edwards v. Commissioner of Internal Revenue*, the Tax Court concluded:

In sum, the statutory authority of the Commissioner and the Internal Revenue Service is indisputable. The Courts have repeatedly held that the Internal Revenue Service is an authorized agency of the United States and rejected as frivolous arguments to the contrary. . . . Petitioner's argument that the Internal Revenue Service is not an agency of the United States and is not authorized to administer and enforce the internal revenue laws is frivolous and groundless.

T.C.M. 2002-169, No. 7010-00, 2002 WL 1488743, at *22 (2002).

See also *McNeil v. United States*, 78 Fed. Cl. 211, 221 (2007)

("[T]he IRS is an agency of the United States government.");

United States v. Scott, 37 F.3d 1564, 1584 (10th Cir. 1994)

("[T]he IRS is an agency of the United States government and, of course, a conspiracy to defraud that agency necessarily

constitutes a conspiracy to defraud the United States."); *Greene v. I.R.S.*, No. 1:08-CV-0280 (LEK/DRH), 2008 WL 5378120, at *3

(N.D.N.Y. Dec. 23, 2008) ("The IRS is an agency of the United States under the Secretary of the Treasury."); *Collins v. I.R.S.*, No. C07-0289RSL, 2007 WL 1217722, at *1 (W.D. Wash. Apr. 23,

2007) (same); *Patridge v. United States I.R.S.*, No. 05-3249, 2005 WL 3536098, at *1 (C.D. Ill. Dec. 23, 2005) (same); *Zaklama v. I.R.S.*, No. Civ.A. 05CV374DMC, 2005 WL 3479690, at *2 (D.N.J. Dec. 20, 2005) (same).

Even though the courts in these cases did not decide the issue of the IRS's status in the context of a party's request to take judicial notice, the Court finds these cases support the government's assertion that whether the IRS is an agency of the United States is "capable of accurate and ready determination" and, therefore, appropriate for judicial notice.

Accordingly, the Court grants the government's request to take judicial notice of the IRS as an agency of the United States. The Court, however, notes it intends to instruct the jury pursuant to Federal Rule of Evidence 201(g) that the jury "may, but is not required to, accept as conclusive" the fact that the Court has taken judicial notice of the IRS as an agency of the United States.

CONCLUSION

For these reasons, the Court **GRANTS** the government's request in its Notice (#122) of Legal Analysis to Establish the Internal Revenue Service is an Agency of the United States Government that the Court has taken judicial notice that the IRS is an agency of the United States government with the limitation set forth

herein.

IT IS SO ORDERED.

DATED this 8th day of April, 2009.



ANNA J. BROWN
United States District Judge